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5 **Attorneys for Defendant**
6 **Las Vegas Metropolitan Police Department**

7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
10

11 CINDY NUGENT-DAVI, individually

Case No. 2:09-cv-01921-LRH-PAL

12 Plaintiff,

13 vs.

MOTION TO DISMISS

14 CLARK COUNTY, a County existing under
the laws of the State of Nevada; THE LAS
15 VEGAS METROPOLITAN POLICE
DEPARTMENT DOE OFFICER I through X,
16 individually, and in their official capacity;
DOES XI through XX, inclusive,

Oral Argument Requested

17 Defendants.

18 Defendant, Las Vegas Metropolitan Police Department ("LVMPD"), by and through its
19 attorneys of record, Fox Rothschild, LLP, hereby moves this court for an Order Dismissing
20 Plaintiffs' Complaint pursuant to Fed.R.Civ.P. 12 (b) and/or 56. This Motion is made and based
21 on the pleadings and papers on file herein, the Memorandum of Points and Authorities attached
22 hereto, and any oral argument this Court may entertain at the time of hearing pursuant to LR 78-
23 2.
24

1 DATED this 23rd day of December, 2009.

2 FOX ROTHSCHILD, LLP

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4 BY: 

5 LYSSA S. ANDERSON

6 3800 Howard Hughes Parkway, Ste. 500

7 Las Vegas, Nevada 89169

8 *Attorneys for Defendant*

9 *Las Vegas Metropolitan Police Department*

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 In Plaintiff's Complaint she alleges several causes of action arising out of her alleged
13 detention on October 10, 2007 at the Clark County Detention Center (hereinafter "CCDC"),
14 however, Plaintiff was not ever in custody at CCDC on the evening in question. Moreover,
15 Plaintiff was actually detained at the City Jail¹ on the date alleged in her Complaint. As Plaintiff
16 has alleged no set of facts which could lead to any conceivable liability on the part of LVMPD,
17 Plaintiff's Complaint must be dismissed.

18 **II. STANDARD OF REVIEW**

19 Rule 12 of the Federal Rules of Civil Procedure generally governs dismissal of claims.

20 To wit:

21 (b) **How to Present Defenses.** Every defense to a claim for relief
22 in any pleading must be asserted in the responsive pleading if one
23 is required. But a party may assert the following defenses by
24 motion. (6) a claim upon which relief can be granted...a motion
making any of these defenses shall be made before pleading if a
responsive pleading is permitted.

Fed.R.Civ.P. 12(b)

¹ A separate legal entity from LVMPD.

1 In *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1555, 174 (1997), the United States
2 Supreme Court held that a motion to dismiss should be granted if the Plaintiff does not delineate
3 “enough facts to state a claim to relief that is plausible on its face.” “[A] plaintiff’s obligation to
4 provide the grounds of its entitlement to relief requires more than labels and conclusions and a
5 formulaic recitation of the elements of a cause of action will not do.” *Id.* at 164-65. “Factual
6 allegations in the complaint must be enough to raise a right to relief above the speculative level
7 on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Id.*
8 (citation omitted). A complaint cannot simply leave “open the possibility that a plaintiff might
9 later establish some set of undisclosed facts to support recovery.” *Id.* at 168. Rather, the facts
10 set forth in the complaint must be sufficient to “nudge the claims across the line from
11 conceivable to plausible.” *Id.* at 174. Moreover, although the Court must take all well pleaded
12 allegations of material fact as true and construe them in the light most favorable to the non-
13 moving party, “conclusory allegations of law and unwarranted inferences are insufficient to defeat
14 a motion to dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004) (internal citations
15 omitted).

16 However, if, on a motion to dismiss, documents outside of the pleadings themselves are
17 introduced and considered by the court, the motion is to be treated as one for summary judgment
18 under Fed.R.Civ.P. 56. Fed.R.Civ.P. 12 (c). A party against whom a claim is brought may move
19 for summary judgment at any time. Fed.R.Civ.P. 56 (b). Pursuant to Rule 56(c), summary
20 judgment shall be granted when, “viewing the facts in the light most favorable to the non-moving
21 party, (1) there is no genuine issue of material fact, and (2) the moving party is entitled to
22 summary judgment as a matter of law. Once the moving party has satisfied his burden, he is
23 entitled to summary judgment if the non-moving party fails to designate, by affidavits,
24 depositions, answers to interrogatories, or admission on file, ‘specific facts showing that there is

a genuine issue for trial.” *Arpin v. Santa Clara Valley Transportation Agency*, 261 F.3d 912, 919 (9th Cir. 2001), citing *Celotex v. Catrett*, 477 U.S. 317, 324-325, 91 L.Ed. 2d 265, 106 S.Ct. 2548 (1986). The mere existence of a scintilla of evidence in support of the non-moving party’s position is not sufficient. *Id.* (citing *Triton Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1220 (9th Cir. 1995)). “Factual disputes whose resolution would not affect the outcome of the suit are irrelevant to the consideration of a motion for summary judgment.” *Id.* (Citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 91 L.Ed 2d 202, 106 S.Ct. 2505 (1986)). “In other words, ‘summary judgment should be granted where the non-moving party fails to offer evidence from which a reasonable jury could return a verdict in its favor.’” *Id.* “(citing *Triton Energy*, 68 F.3d at 1221).

III. UNDISPUTED FACTS

1. Plaintiff alleges she was “beaten by corrections officers while she was a detainee at CCDC.” Plaintiff’s Complaint at Paragraph 1.

2. Plaintiff alleges she was “a detainee at CCDC at the time of the incident.” Plaintiff’s Complaint at Paragraph 5.

3. Plaintiff alleges she was “taken into custody and brought to CCDC on October 11, 2007.” Plaintiff’s Complaint at Paragraph 20.

4. Plaintiff’s Complaint is silent as to any inappropriate conduct by LVMPD prior to her alleged detention. Instead, Plaintiff’s Complaint alleges inappropriate conduct following her detention. Plaintiff’s Complaint, generally.

5. Plaintiff was never in custody at CCDC on the night alleged in her Complaint. Exhibit A, Affidavit of Deborah Somma, Paragraph 7.

6. LVMPD has determined through a review of the applicable records that Plaintiff was in custody at the City Jail on the evening alleged in her Complaint. Affidavit of Deborah

Somma, Paragraph 7.

7. The City Jail is affiliated with the City of Las Vegas and is a separate legal entity from LVMPD. Affidavit of Deborah Somma, Paragraph 9.

IV. LEGAL ARGUMENT

As discussed below, the lack of well pleaded factual assertions in the Complaint is fatal to each of Plaintiff's counts. Therefore, dismissal of Plaintiff's Complaint is warranted.

The Las Vegas Metropolitan Police Department Is Not A Proper Defendant For Any Of Plaintiff's Causes Of Action.

The Plaintiff's Complaint alleges that a number of inappropriate acts occurred during her detention on October 11, 2007. However, Plaintiff has mistakenly filed suit against LVMPD based upon her erroneous belief that she was in custody at CCDC on that date.

As set forth in the Affidavit of Deborah Somma, Plaintiff was not in custody at CCDC and, instead, was in custody at the City Jail. Moreover, the City Jail is affiliated with the City of Las Vegas and is a separate legal entity from LVMPD. As such, Plaintiff has failed to allege any set of facts which could plausibly entitle her to relief against LVMPD.

Accordingly, Plaintiff's claims against LVMPD based on allegations of her alleged detention at the City Jail are without any merit, whatsoever. Plaintiff has alleged no evidence of involvement of LVMPD to warrant the continued litigation of claims. The Court should, therefore, dismiss LVMPD from this litigation.

V. CONCLUSION

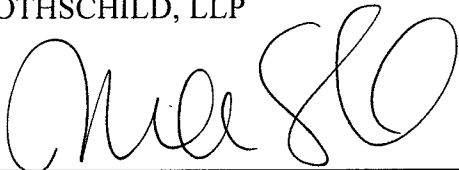
Wherefore, Defendant Las Vegas Metropolitan Police Department respectfully requests this honorable Court to enter an order granting judgment in its favor or, in the alternative, dismissing Plaintiff's Complaint with prejudice, and for any other such relief as this court deems

1 fair and proper.

2 DATED this 23rd day of December, 2009.

3 FOX ROTHSCHILD, LLP

4
5 BY:


LYSSA S. ANDERSON
3800 Howard Hughes Parkway, Ste. 500
Las Vegas, Nevada 89169
Attorneys for Defendant
Las Vegas Metropolitan Police Department

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9 **CERTIFICATE OF MAILING**

10 Pursuant to FRCP 5(b), I hereby certify that service of the foregoing **MOTION TO**
11 **DISMISS** was made this date by depositing a true copy of the same for mailing at Las Vegas,
12 Nevada, addressed to each of the following:

13 Cindy Nugent-Davi
14 5749 Arrow Tree Street
15 Las Vegas, Nevada 89130-7278
In Proper Person

16 DATED this 22nd day of December, 2009.

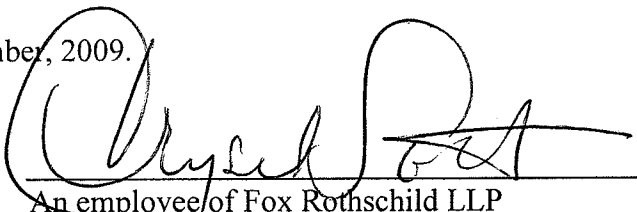
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18 
An employee of Fox Rothschild LLP

EXHIBIT A

1 LYSSA S. ANDERSON
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3 Las Vegas, Nevada 89169
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5 Attorneys for The Las Vegas Metropolitan Police Department

6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

8 CINDY NUGENT-DAVI, individually

Case No. 2:09-cv-01921-LRH-PAL

9 Plaintiff,

10 vs.

**AFFIDAVIT OF DEBORAH SOMMA IN
SUPPORT OF MOTION TO DISMISS**

11 CLARK COUNTY, a County existing under
the laws of the State of Nevada; THE LAS
VEGAS METROPOLITAN POLICE
12 DEPARTMENT DOE OFFICER I through X,
individually, and in their official capacity;
13 DOES XI through XX, inclusive,

14 Defendants.

15 STATE OF NEVADA

16 COUNTY OF CLARK

} ss

17 Deborah Somma, being duly sworn, deposes and says:

18 1. I am an employee of the Las Vegas Metropolitan Police Department's
19 ("LVMPD") Risk Management Section. I have personal knowledge of the facts and
20 circumstances set forth in this affidavit and make this affidavit under penalty of perjury.

21 2. I make this affidavit in support of LVMPD's Motion to Dismiss.

22 3. In December 3, 2009, LVMPD was served with Plaintiff Cindy Nugent-Davi's
23 Complaint.

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